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Attorneys for Third-Party Defendant COR Clearing, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHINA ENERGY CORPORATION,

Plaintiff,

vs.

ALAN HILL, et al.,

Defendants,

ELENA SAMMONS AND MICHAEL SAMMONS,
Third-Party Plaintiffs

vs.

COR CLEARING, LLC,

Third-Party Defendant.

3:13-CV-562-MMD-VPC

**COR CLEARING LLC'S
OPPOSITION TO THIRD-
PARTY PLAINTIFF'S
MOTION FOR LEAVE TO
FILE "SECOND AMENDED
THIRD PARTY
COMPLAINT"**

1 Third-Party Defendant COR Clearing, LLC ("COR") respectfully submits this
2 Opposition to Third-Party Plaintiffs Michael Sammons's and Elena Sammons's ("Third-Party
3 Plaintiffs" or the "Sammons") "Motion for Leave to File 'Second Amended Third Party
4 Complaint'" (Doc. 263) (the "Motion"). COR opposes the Motion for three reasons. First, there
5 is no need to clarify the relief sought by the Sammons' First Amended Third Party Complaint
6 (Doc. 128), and, in fact, the Motion provides no such reason for doing so. Second, the Motion is
7 untimely, as the deadline for amending pleadings expired nearly a month prior to the filing of
8 the Motion. Third, the Motion fails to comply with Local Rule 15-1. For these reasons, the
9 Motion is due to be denied.
10

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 In opposition to Third-Party Plaintiffs' Motion, COR states the following:

13 1. The relief that the Motion requests is unnecessary here, and the Motion is
14 therefore due to be denied. The First Amended Third Party Complaint (Doc. 128) speaks for
15 itself. COR is not aware of a pending need for the First Amended Third Party Complaint to be
16 "clarified," and the Motion itself fails to provide any reason that clarification would be
17 necessary at this time. Indeed, as the Motion notes, this Court has already observed that "the
18 Sammons request a declaratory judgment" Doc. 226 at 2. The specific form of relief that
19 the Sammons seek as a result of that request for a declaratory judgment is immaterial at this
20 juncture (in that Third-Party Plaintiffs' claim for relief against COR can only arise based upon a
21 certain outcome in the underlying action in which Third-Party Plaintiffs are defendants).
22 Moreover, the Sammons can seek only the relief set forth in their First Amended Third Party
23 Complaint, as the time to amend the pleadings has passed. *See* discussion *infra*. Because
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1 clarification of what relief is requested in the First Amended Third Party Complaint is
2 unnecessary, the Motion is due to be denied.

3 2. To the extent that the Motion seeks to amend the First Amended Third Party
4 Complaint further, it is untimely and is due to be denied. All parties to this action agreed to and
5 this Court entered a scheduling order on August 7, 2014. *See* Doc. 245. That Order states, "The
6 last date to file motions to amend the pleadings or add parties is August 19, 2014." Doc. 245 at
7 2, ¶ 2. The Motion was filed on September 17, 2014, twenty-nine (29) days *after* the deadline
8 for submission of motions to amend the parties' pleadings had expired. Moreover, the Sammons
9 did not move to extend the deadline for motions to amend prior to filing the Motion, and the
10 Sammons also failed to seek leave to amend the First Amended Complaint out of the time
11 prescribed in this Court's Order. Accordingly, the Motion is untimely and due to be denied.

13 3. To the extent that the Motion seeks to amend the First Amended Third Party
14 Complaint further, the Motion fails to comply with Local Rule 15-1 and is due to be denied.
15 Local Rule 15-1(a) provides, "Unless otherwise permitted by the Court, the moving party shall
16 attach the proposed amended pleading to any motion to amend, so that it will be complete in
17 itself without reference to the superseding pleading." The Sammons completely failed to comply
18 with this requirement. Instead, they vaguely request that this Court permit them to "file a
19 Second-Amended Complaint if the Court deems it necessary to clarify that the TP-P seek *only*
20 declaratory relief." Doc. 263 at 2 (emphasis in original). The Motion does not give the Court or
21 COR (the opposing party) notice of precisely what this amended pleading would contain as
22 Local Rule 15-1 requires. Instead the Motion merely states that the new pleading would only be
23 seeking declaratory relief. *See id.* The Sammons' Motion is thus due to be denied based upon
24 their failure to comply with Local Rule 15-1.
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CONCLUSION

For the reasons stated herein, Third-Party Plaintiffs' Motion for Leave to File "Second Amended Third Party Complaint" is due to be denied.

Respectfully submitted this the 2nd day of October, 2014.

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By: /s/ Peter J. Tepley
Peter J. Tepley

*Counsel for Third-Party Defendant COR Clearing,
LLC*

CERTIFICATE OF SERVICE

I, Peter J. Tepley, certify that on October 2, 2014, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the electronic mail notice list.

A copy was also served by First Class U.S. Mail, postage prepaid on the following individuals:

Elena Sammons
15706 Seekers St.
San Antonio, TX 78255

Randy Dock Floyd
4000 Goff Road
Aynor, SC 29551

Jun He
231 Split Rock Road
The Woodlands, TX 77381

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed October 2, 2014, at Birmingham, Alabama.

By: /s/ Peter J. Tepley
Peter J. Tepley